

**BEFORE THE INDIANA
CASE REVIEW PANEL**

In The Matter of C.S.,)
Petitioner,)
)
And)
) **CAUSE NO. 120904-89**
The Indiana High School Athletic Association,)
Respondent.)
)
Review Conducted Pursuant to Ind. Code ch. 20-26-14)

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

PROCEDURAL HISTORY

On or about May 29, 2012, C.S. (“Petitioner”) completed the student portion of an Indiana High School Athletic Association (“IHSAA”) Athletic Transfer Report (“Transfer Report”). The Transfer Report requested that the IHSAA make an athletic eligibility determination for the 2012–2013 school year because Petitioner transferred from Rock Creek Academy (“Rock Creek”) in Sellersburg, Indiana to Scottsburg High School (“Scottsburg”). On May 31, 2012, Rock Creek, as the sending school, completed its portion of the Transfer Report, and Scottsburg, as the receiving school, completed its portion on the same day.

On June 5, 2012, the IHSAA Assistant Commissioner Robert Faulkens determined that Petitioner’s transfer was subject to Rule 19-6.2, Limited Eligibility When Transfer Without Change of Residence by Parent(s)/Guardian(s). Thus, Petitioner is entitled to limited eligibility until March 3, 2013. Petitioner appealed Assistant Commissioner Faulkens’s determination to the IHSAA Executive Committee (“Executive Committee”).

The IHSAA sent a letter to Petitioner acknowledging receipt of Petitioner’s request for appeal and set the matter for a hearing before the Executive Committee for August 21, 2012. Based on the evidence presented at the August 21, 2012 hearing, the Executive Committee issued its ruling on August 31, 2012, upholding Assistant Commissioner Faulkens’s ruling.

On September 4, 2012, Petitioner appealed the Executive Committee’s decision to the Indiana Case Review Panel (“CRP”),¹ and the CRP notified the parties that it would review the

¹ According to Ind. Code § 20-26-14-6(c)(3), the CRP is a nine-member panel established by the IHSAA. The Superintendent of Public Instruction appoints the members and his designee serves as the Chairperson. The CRP

decision during a CRP meeting. The CRP requested and received the record from the IHSAA. On September 20, 2012, the CRP held a meeting where a quorum of members was present.² Based on a review of the record and applicable rules and laws, the CRP made the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. Petitioner lives with his parents in Scottsburg, Indiana within the Scottsburg school district.
2. Petitioner attended Rock Creek Christian Academy, a private Christian academy, during his 7th grade year. At the beginning of Petitioner's 8th grade year, Rock Creek Christian Academy became a public charter school.
3. Petitioner continued to attend Rock Creek after it became a public charter school until the end of his freshman year, 2011–2012. He was one of the top academic students and was a member of the National Honor Society. At Rock Creek, Petitioner participated on the varsity soccer and basketball teams. He last participated in sports at Rock Creek on March 2, 2012.
4. After Petitioner's freshman year at Rock Creek, he transferred to Scottsburg, which is the school system Petitioner lives in. His transfer to Scottsburg did not correspond to a change in residence.
5. Petitioner's mother worked very near Rock Creek and took Petitioner and his brother to and from school every day. She was laid off from that job but found a new one in New Albany, Indiana, which is approximately thirty minutes south of Rock Creek. Petitioner's father works in Seymour, Indiana, which is also approximately thirty minutes north of Rock Creek.
6. The job locations of Petitioner's parents make transporting Petitioner and his brother to and from Rock Creek more difficult. Petitioner and his brother can ride the bus home from Scottsburg schools. Petitioner's and his brother's attendance at Scottsburg would also cost the family less money.
7. According to Petitioner's mother, Scottsburg offers more advance placement and dual credit courses than Rock Creek.

reviews final student-eligibility decisions of the IHSAA when a parent or guardian so requests. The CRP may uphold, modify, or nullify any student eligibility decision made by the IHSAA.

² The following members were present at the meeting: Angela Rapp Weber (Chairperson), Ms. Dana Cristee, Ms. Cathy Ann Klink, Mr. Brett Daghe, and Mr. Mickey Golembeski. Mr. Chris Greisl attended the meeting as counsel to the CRP.

8. At the August 21, 2012 hearing, Petitioner stated he mainly transferred to Scottsburg because Scottsburg offers an engineering course he wishes to take. And Scottsburg is a bigger school, attracting more people, and therefore colleges, at sporting events. Petitioner hopes his participation in athletics at Scottsburg will provide him with greater exposure so that he may secure a college athletic scholarship.
9. Scottsburg does not have a junior varsity soccer team.
10. Even though Scottsburg signed the verification on the Transfer Report, recommending that Petitioner receive limited athletic eligibility, Rock Creek did not sign the verification,³ indicating Petitioner should receive limited athletic eligibility pursuant to Rule 19-6.2.
11. As a result of Assistant Commissioner Faulkens's ruling, which the Executive Committee upheld, Petitioner has limited athletic eligibility and gains full athletic eligibility on March 3, 2013. As indicated above, Petitioner appealed the Executive Committee's determination to the CRP. Since Rock Creek did not sign the verification required under Rule 17-8.5, Petitioner seeks a general waiver pursuant to Rule 17-8.1.

CONCLUSIONS OF LAW

1. Any Finding of Fact that may be considered a Conclusion of Law shall be so considered. Any Conclusion of Law that may be considered a Finding of Fact may be considered as such.
2. Although the IHSAA is a voluntary not-for-profit corporation and is not a public entity, its decisions with respect to student eligibility to participate in interscholastic athletic competition are considered a "state action" making the IHSAA analogous to a quasi-governmental entity. IHSAA v. Carlberg, 694 N.E.2d 222 (Ind. 1997), *reh. den.* (Ind. 1998).
3. The CRP has jurisdiction in this matter. The CRP is established by the IHSAA to review final student eligibility decisions with respect to interscholastic athletic competition. Ind. Code ch. 20-26-14. The CRP has jurisdiction when a student's parent or guardian refers the case to the CRP not later than thirty days after the date of the IHSAA decision. Ind. Code § 20-26-14-6(b). In this matter, the Executive Committee rendered a final determination of student-eligibility adverse to the Petitioner on August 21, 2012, and Petitioner sought timely review on August 24, 2012.

³ A review of the Transfer Report indicates that Rock Creek's principal, Sara Hauselman, did sign the verification without providing a date. She also recommended that Petitioner receive limited eligibility pursuant to Rule 19-6.2. Ms. Hauselman's testimony at the August 21, 2012 is consistent with this recommendation. Thus, the CRP believes her signature on the verification to be an oversight and not an indication of Rock Creek's recommendation.

4. The CRP may uphold, modify, or nullify the IHSAA Executive Committee's decision. (Ind. Code § 20-26-14-6(c)(3)).
5. The CRP is not required to review the IHSAA determination *de novo*. The CRP review is similar to an appellate-level administrative review. A full hearing to recreate the record is not required. The CRP is required to hold a "meeting," not a hearing. Ind. Code § 20-26-14-6(c)(2). The CRP is not required to collect testimony and information during the meeting, but may collect testimony and information prior to the meeting. See, Ind. Code § 20-26-14-6(c)(1). If the CRP upholds the IHSAA decision, pursuant to Ind. Code § 20-26-14-7(c), a court of jurisdiction may consider the IHSAA decision as opposed to the CRP decision. The Executive Committee hearing process provides students with due process protection. Carlberg, 694 N.E.2d at 241.
6. The CRP reviews the IHSAA determination for arbitrariness or capriciousness. See Carlberg, 694 N.E.2d at 233. A rule or decision will be found to be arbitrary and capricious "only when it is willful and unreasonable, without consideration and in disregard of the facts or circumstances in the case, or without some basis which would lead a reasonable and honest person to the same conclusion." Id. (citing Dep't of Natural Resources v. Indiana Coal Council, Inc.), 542 N.E.2d 1000, 1007 (Ind. 1989).
7. The CRP agrees with the Executive Committee that Petitioner's transfer was neither predominantly motivated by athletics nor the result of undue influence. The evidence indicates that Petitioner transferred for financial and academic reasons. Petitioner's transfer was also without a corresponding change of residence by his parents or guardian to Scottsburg's district; he thus qualified for limited athletic eligibility at Scottsburg pursuant to Rule 19-6.2.
8. There are two waivers available to students under the IHSAA Rules: a Limited Eligibility Waiver pursuant to Rule 17-8.5 and a General Waiver of an IHSAA Rule pursuant to Rule 17-8.1. The CRP agrees with the Executive Committee that because Rock Creek's principal did not sign the verification on the Transfer Report, Petitioner does not qualify for a Limited Eligibility Waiver pursuant to Rule 17-8.5.
9. In order to qualify for a General Waiver of an IHSAA Rule pursuant to Rule 17-8.1, Petitioner needed to provide clear and convincing evidence that, among other things, a hardship condition existed as defined in Rule 17-8.3. Rule 17-8.3(b) provides that if the transfer is motivated even partially by athletic reasons, albeit not primarily, a student is ineligible for a general waiver. Petitioner admitted at the August 21, 2012 hearing that one reasons for his transfer to Scottsburg was to participate in athletics at a larger venue. Hence, Petitioner does not qualify for a general waiver pursuant to Rule 17-8.3.